



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 12

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

COPY MAILED

MAY 8 2001

OFFICE OF PETITIONS

In re Application of
Gailey, et al.
Application No. 08/973,535
Filed: February 5, 1998
Attorney Docket No. 3542-287

DECISION ON PETITION

This is a decision on the petition filed on November 10, 2000 under 37 C.F.R. §1.181, to withdraw the holding of abandonment.

The above-identified application was abandoned for failure to timely file a proper response to the non-final Office action mailed April 5, 1999. This action set a three (3) month shortened statutory period for response. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were noted in the application. Accordingly, the application became abandoned on July 6, 1999. A Notice of Abandonment was mailed on October 13, 1999.

Under 37 C.F.R. §1.181(f), any petition not filed within 2 months from the action complained of, may be dismissed as untimely. Petitioner states that, the Notice of Abandonment was mailed eight days after, according to their records, the CPA was received in the Office. Petitioner expected that prosecution would continue on the continuing application. Given the circumstances of abandonment and the evidence provided on petition, described below, this discretion is exercised in favor of the petitioner.

Petitioner argues that abandonment of the above-identified application is improper because a proper and timely reply to the non-final Office action, a request for continued prosecution application (CPA), was filed on October 5, 1999, pursuant to 37 C.F.R. §1.10. According to petitioner, this reply was made timely by an accompanying petition for a three-month extension of time (and extension fee). In support of this argument, petitioner supplies a copy of the CPA transmittal and return postcard receipt.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the Office of Initial Patent Examination (OIPE) on October 5, 1999; 2) it specifically identifies the items being filed, including a "continued prosecution application request transmittal; petition for extension of time under 37 CFR 1.136(a)" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Moreover, a review of the electronic revenue accounting and management record in this

application reveals that on October 7, 1999 (mailing date October 5, 1999), a check, including the exact fees petitioner maintains were submitted with the CPA, was processed on this application.

In view thereof, the petition is GRANTED. The holding of abandonment is WITHDRAWN.

The application file is being forwarded to Technology Center 3700 for processing of the CPA, filed October 5, 1999 (and resubmitted on petition November 10, 2000).

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy